APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-1595

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARINE DIVISION ILA, AFL-CIO, and UNION DE TRABAJADORES DE MUELLES Y RAMAS ANEXAS, LOCAL 1740 ILA, AFL-CIO, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

Filed November 15, 1973

Judgment

Before: Bazelon, Chief Judge, Wright and MacKinnon, Circuit Judges.

THIS CAUSE came on to be heard upon the petition of the International Organization of Masters, Mates and Pilots, International Marine Division, ILA, AFL-CIO and Union De Trabajadores De Muelles y Ramas Anexas, Local 1740, ILA-AFL-CIO, to review an order of the National Labor Relations Board issued against Petitioners, on June 12, 1972, and upon the cross-application of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on February 22, 1973, and has considered the briefs and transcripts of the record filed in this cause. On October 4, 1973, the Court being fully advised in the premises, handed down its decision denying the petition for review and granting enforcement of the Board's order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that the International Organization of Masters, Mates and Pilots, International Marine Division, ILA, AFL-CIO and Union De Trabajadores De Muelles y Ramas Anexas, Local

1740, ILA-AFL-CIO, their officers, agents, and representatives abide by and perform the directions of the Board in said order contained.

/s/ J. SKELLY WRIGHT
J. Skelly Wright
Judge, United States Court of Appeals for the District of Columbia Circuit

/s/ GEORGE E. MACKINNON
George E. MacKinnon
Judge, United States Court of Appeals for the District of Columbia Circuit

Chief Judge Bazelon dissents from the foregoing judgment for the reasons set forth in his dissenting opinion of October 4, 1973.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-1595

SEPTEMBER TERM, 1973

[Same Case]

Before: Bazelon, Chief Judge; Wright and MacKinnon, Circuit Judges

Filed December 3, 1973

Order

On consideration of Petitioners' petition for rehearing, it is ORDERED by the Court that Petitioners' aforesaid petition for rehearing is denied.

Per Curiam

For the Court:

/s/ HUGH E. KLINE
Hugh E. Kline
Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-1595

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS INTERNATIONAL MARINE DIVISION, ILA, AFL-CIO and UNION DE TRABAJADORES DE MUELLES Y RAMAS ANEXAS, LOCAL 1740, ILA-AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
MARINE & MARKETING INTERNATIONAL CORPORATION, INTERVENOR

Petition to Review and Cross-Application to Enforce an Order of the National Labor Relations Board

Decided October 4, 1973

Burton M. Epstein for petitioners. *Seymour M. Waldman* and *Julian H. Singman* were on the brief for petitioners.

Joseph C. Thackery, Attorney, National Labor Relations Board, with whom *Marcel Mallet-Prevost*, Assistant General Counsel at the time the brief was filed, and *John D. Burgoyne*, Attorney, National Labor Relations Board, were on the brief, for respondent.

Alan A. Bruckner entered an appearance for intervenor.

Before BAZELON, *Chief Judge*, and WRIGHT and MACKINNON, *Circuit Judges*.

Opinion *per curiam*.

Dissenting opinion by *Chief Judge* BAZELON at p. 10.

PER CURIAM: Until November 1970 the container vessel *Floridian* was operated by South American Caribbean Lines (SACAL) on runs between Miami, Florida and San Juan, Puerto Rico. The ship's master and three mates

were represented by petitioner International Organization of Masters, Mates and Pilots (MM&P). Engineering officers were represented by Marine Engineers Beneficial Association (MEBA) and unlicensed seamen by the Seafarers International Union (SIU). SACAL went bankrupt in November 1970 and the *Floridian* was decommissioned and put under Government supervision in Norfolk, Virginia. In March 1971 a new company, Marine & Marketing International Corporation (the company), was formed for the purpose of recommencing operations.

Instead of filling the *Floridian's* crew through the same unions whose members had previously serviced the vessel, the company signed a prehire agreement with MEBA covering all licensed deck officers and engineers. The motive behind this change was apparently not any dissatisfaction with the performance of the former MM&P deck officers. Rather, the new arrangement was financially beneficial to the company as MEBA agreed to elimination of one engineering job and SIU, which continued as representative of the unlicensed seamen, agreed to elimination of three seaman's jobs. This arrangement, combined with certain changes in the wage structure effected by the shift to MEBA, evidently saved the company about $100,000 per year.

Pursuant to the prehire agreement, a new master and three new mates, all MEBA members, were hired and reported at Norfolk to prepare the *Floridian* for its first sailing. While the vessel was still at Norfolk, a representative of MM&P contacted the company's president, Eduardo Garcia, and asked when he was going to order officers for the vessel. Garcia thereupon informed the MM&P representative that the company already had made arrangements with MEBA for officers. The MM&P representative, according to Garcia, said the company was "making a big mistake" and, since MM&P was now affiliated with the International Longshoremen's Associa-

tion,[1] there could be "some serious consequences." Garcia later met with the president of MM&P, who said the officer jobs belonged to MM&P by tradition as MM&P officers had manned the *Floridian* since it was first constructed. The MM&P president also told Garcia that he would rather see the vessel laid up than be operated by MEBA.

Despite these threats, the *Floridian* set sail from Norfolk to Miami to take on cargo for its first voyage under new management. At the pier in Miami the former captain and two former mates, all members of MM&P, picketed the vessel. The picket signs indicated that MM&P was affiliated with the International Longshoremen's Association (ILA), and members of a Miami local of ILA, not charged herein, observed the picket line and refused to load the ship. The company obtained a temporary restraining order in state court, the ship was loaded, and it set sail for San Juan. When the ship arrived there the same officers who had picketed in Miami appeared again, carrying the same picket signs except that they were now written in Spanish. Members of petitioner Local 1740, Union de Trabajadores de Muelles y Ramas Anexas, ILA, on instructions from their union, refused to cross the picket line. The vessel remained unloaded for six weeks until an injunction stopped the picketing.

The Board found that MM&P and Local 1740 committed an unfair labor practice under Section 8(b)(1)(B) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(B) (1970), which provides: "It shall be an unfair labor practice for a labor organization or its agents

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[1] In fact, on March 31, 1971 MM&P and ILA announced that the Executive Board of ILA had decided to issue a charter of affiliation to MM&P. At the time of the trial examiner's hearing herein a ratification ballot aimed at approval of the Executive Board's resolution was being processed but had not yet been completed.

• • • to restrain or coerce • • • an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." We decline petitioners' invitation to set aside that finding.

I

It is conceded by all parties that MM&P's actions come within the literal purview of the statutory language. The admitted purpose of the picketing was to pressure the company to break its contract with MEBA, fire the new MEBA master and mates, and rehire the former MM&P master and mates. The Board was obviously correct in concluding that the master and mates are representatives of the employer for the adjustment of grievances. Therefore, under the statutory language the picketing was intended to coerce the employer in the selection of his grievance adjusting representatives.

Petitioners argue, however, that when Congress enacted Section 14(a) of the Act, 29 U.S.C. § 164(a) (1970), and thereby deprived supervisors (including grievance adjusters[2]) of the protections of the Act, Congress intended to allow supervisors to resort to self-help to protect their interests, as they concededly did here. On this approach Section 8(b)(1)(B) would be inapplicable to the picketing here, provided petitioners are not a labor union protected by the Act and therefore subject to its restrictions. The legislative history may well be read as evidencing a congressional purpose to permit supervisors to resort to self-help. *See, e.g.*, 1 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 613 (1948); Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 1, 4-5 (1947). Section 8(b), by its terms, applies only to "a labor or-

[2] "The term 'supervisor' means any individual having authority, in the interest of the employer, • • • to adjust [employee] grievances • • •." 29 U.S.C. § 152(11) (1970).

ganization or its agents * * *." A union composed solely of supervisors is not a "labor organization" as that term is defined in the Act. *See* 29 U.S.C. § 152(b) (1970). It has no statutory "employees." *See* 29 U.S.C. § 152(3). Such a union, therefore, cannot commit an unfair labor practice under any of the subsections of Section 8(b), including Section 8(b)(1)(B).

The main difficulty with MM&P's position in the present case is that it admittedly *is* a "labor organization" under the Act. Indeed, our own court has recently held that, because MM&P has certain locals containing statutory "employees," it constitutes a "labor organization" subject to the restrictions of Section 8(b). *See Int. Org. of Masters, Mates & Pilots* v. *NLRB*, 122 U.S.App.D.C. 74, 80, 351 F.2d 771, 777 (1965).

Nor do we think it significant that in this particular instance MM&P's efforts were directed on behalf of workers all of whom were supervisors. As Judge Friendly has said, it may be that exempting unions composed solely of supervisors from Section 8(b) was considered by Congress as a *"quid pro quo"* for having deprived them of the protections of the Act.

> "But the legislative history is far from being so definite or persuasive as to justify our reading the Act, in a manner opposed to its plain language, so as to permit a union in which 'employees participate' to engage in acts branded as unfair labor practices by § 8(b) simply because the workers on whose behalf the union was acting are all supervisors."

National Marine Engineers Beneficial Assn v. *NLRB*, 2 Cir., 274 F.2d 167, 173 (1960).

At first glance it might seem that this interpretation of the Act produces a rather arbitrary result, since the participation of "employees" in MM&P here has no real relevance to the facts of the present case. But under the Act this interpretation works in favor of MM&P as well

as against it. Because it is a "labor organization" MM&P obtains certain statutory protections. For example, Section 8(a)(2), 29 U.S.C. § 158(a) (2), makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of *any labor organization* or contribute financial or other support to it * * *." (Emphasis added.) Similarly, Section 8(a)(3), 29 U.S.C. § 158(a) (3), makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in *any labor organization* * * *." (Emphasis added.) MM&P would forfeit the protections of these provisions were it a union composed solely of supervisors and hence not a "labor organization."

Therefore, even though we agree with the general proposition that Congress intended to permit supervisors to resort to self-help, a supervisors' union cannot have it both ways. If it allows statutory "employees" to participate, it becomes a "labor organization" entitled to the protections given such organizations and subject to the restrictions imposed by Section 8(b) on such organizations. If it does not allow any "employees" to participate, it is freed of any responsibilities under Section 8(b) at the price of forfeiting the protections of Section 8(a).

II

Petitioners next contend that, even if they are subject to its restrictions, Section 8(b) (1) (B) was never intended to reach the picketing that took place here. They argue that Section 8(b) (1) (B), so far as it pertains to grievance adjusters, is concerned solely with attempts by a labor organization to change the person utilized by the employer to adjust the grievances of members of that same organization. For example, there would be an unfair labor practice under Section 8(b) (1) (B) here if

SIU attempted to coerce the selection of the master and mates since the unlicensed seamen represented by SIU have their grievances adjusted by the master and mates.

We have examined the legislative history with care, and there is some evidence that Congress' primary concern was with situations falling within petitioner's interpretation of the Act. *See* 2 LEGISLATIVE HISTORY, *supra*, at 1012, 1077. But we have found nothing showing that Congress intended not to reach conduct of the sort that took place in this case—conduct which all parties agree comes within the statute's literal scope. If anything, Congress simply did not address itself to the specific problem that has arisen here, probably because it assumed that supervisors wanting to engage in this kind of picketing would avail themselves of the opportunity not to be classified as a "labor organization" and thus be free of all the restraints of Section 8(b).

While we are aware that labor legislation does not readily adapt itself to the "plain meaning" school of jurisprudence, *see, e.g., National Woodwork Manufacturers Assn* v. *NLRB*, 386 U.S. 612, 619 (1967), we believe several factors militate against judicially creating an exception that would immunize MM&P's conduct here. First, petitioners concede in their brief that if the company's desire to deal with MEBA rather than MM&P was based on a valid Section 8(b) (1) (B) interest, *i.e.*, the company's interest in the supervisory skills, qualifications or loyalties of the members of the respective unions, rather than upon financial considerations, then its decision to choose one union over the other should properly be free from coercion under the statute. This would mean that in each case where a labor organization such as MM&P or MEBA sought to put its men on a vessel presently staffed with officers of the other, the legality of their picketing would depend on the employer's reasons for ultimately choosing one union rather than the other. We doubt that Congress intended any such

post hoc inquiry into the employer's motives where the union's action is directly and inherently destructive of a right guaranteed in the statute—the right to be free from coercion in the selection of grievance adjusters. The coercive nature of MM&P's picketing, especially in light of MM&P's successful efforts to capitalize on its affiliation with ILA, precludes resting the legality of MM&P's picketing on an open-ended inquiry into the company's "real purpose" in choosing MEBA over MM&P. The company has an interest in being free from coercion from labor organizations in the selection of its grievance adjusters, no matter what its reasons for choosing one union over the other.[3]

In addition, the exception urged upon us by petitioners might well create inequitable results with respect to ensuring that all unions interested in representing the master and mates had equal resort to self-help. Suppose, for example, that MM&P's picketing had been successful at the outset, and that the company had fired the MEBA master and mates and rehired the former MM&P master and mates. One would expect that it would then be MEBA's turn to resort to self-help and picket the vessel. But under petitioners' interpretation of the statute

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[3] Nothing to the contrary is implied in *Hanna Mining Co.* v. *District 2, Marine Engineers Beneficial Assn.*, 382 U.S. 181 (1965). There MEBA picketed a vessel, claiming that the employer unfairly refused to recognize the union as the bargaining representative of the vessel's engineers. The Supreme Court held that state court jurisdiction to enjoin the picketing was not preempted by federal law as the conduct was not arguably prohibited by Section 8(b). While this may constitute an implicit holding that the picketing there did not violate § 8(b)(1)(B), an obvious difference distinguishes the *Hanna* picketing from that which took place in the instant case. In *Hanna* the picketing was not directed at having certain engineers fired and replaced, as was the case here, but rather at having MEBA recognized as the bargaining representative of then employed engineers, a majority of whom allegedly desired MEBA as their representative.

MEBA might well be precluded from resorting to self-help. MEBA, which like MM&P is a "labor organization" subject to the restrictions of Section 8(b),[4] already represents the engineers on the *Floridian*, and the Board might conclude that the captain serves in some respects as a grievance adjuster for the engineers. MEBA's picketing to regain the master's position would then fall within Section 8(b) (1) (B)'s prohibitions, even under the interpretation put forth by MM&P, since MEBA would be seeking to change the person utilized by the employer to adjust the grievances of MEBA members. The inequities of this situation are obvious.

Given these factors, we think that in this area it is better to stick with the lines drawn by Congress rather than create case-by-case exceptions. Such exceptions, though conceived in an attempt to pursue congressional purposes, might well bring results which are unworkable or inequitable in practice. Congress gave MM&P the right to ignore Section 8(b) if it gives up the status of a "labor organization." Given MM&P's refusal to take advantage of that opportunity, there is little this court can or should do to limit the scope of Section 8(b) as applied to petitioners.

III

Finally, with respect to Local 1740, there was substantial evidence before the Board to support the conclusion that it engaged in joint, concerted action with MM&P, and that Local 1740 members did not simply honor a picket line at their place of work. At the time of the events herein, MM&P was in the process of merging with ILA. Not only was this affiliation spelled out in the picket signs carried by MM&P members, but an ILA agent had warned the company's president that the local

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[4] *See National Marine Engineers Beneficial Assn* v. *NLRB*, 2 Cir., 274 F.2d 167 (1960).

would support MM&P in the dispute, under direction from ILA's New York headquarters.

Accordingly, the petition for enforcement is granted and the petition for review is denied.

So ordered.

BAZELON, *Chief Judge, dissenting*: The central issue in this case is whether Section 8(b) (1) (B) of the National Labor Relations Act [1] prohibits supervisor-employers from engaging in peaceful picketing to protest an employer's actions, when the protest is directed solely to the protection of the supervisors' employment interests and in no way implicates the interests of the employer's rank-and-file employees. The majority agrees with the NLRB that the Section does indeed extend to such a protest, so long as the supervisors—who are not, of course, statutory "employees' themselves [2]—are members of a union to which statutory employees belong. It holds that this is so even though none of the union's members is a rank-and-file employee of the employer whose actions the supervisors protest. I cannot agree.

Section 8(b) (1) (B) provides that it is "an unfair labor practice for a labor organization . . . to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." For the majority, the proper result in this case follows from the statutory language as a matter of simple logic: (1) Because some of its locals have statutory employees as members, the petitioner International Organization of Masters, Mates and Pilots (MM&P) is a "labor organization" within the meaning of the Act.[3] (2) Supervisor-members of

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[1] 29 U.S.C. § 158(b)(1)(B) (1970).

[2] *See* 29 U.S.C. § 152(3) (1970).

[3] *See* 29 U.S.C. § 152(5) (1970); Int'l. Org. of Masters, Mates & Pilots v. NLRB, 122 U.S. App. D.C. 74, 351 F.2d 771 (1965).

MM&P attempted, by peaceful picketing, to "coerce" an employer into substituting them for the master and mates hired under an agreement with another union. (3) The master and mates are representatives of the employer for the adjustment of grievances. The syllogism is complete. Since MM&P attempted to coerce an employer in his choice of grievance adjustment representatives, the Board was correct in deciding that MM&P had committed an unfair labor practice.

I do not fault the majority's logic. But in defining the premises from which its logical exercise proceeds, the majority has, I think, allowed itself to be led into a *cul de sac* against which the Supreme Court has repeatedly warned: "It is a 'familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.' "[4] Moreover, the Court has said, this rule has particular force in the construction of labor legislation—legislation that is, "to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests."[5]

In short, the proper scope of Section 8(b) (1) (B)'s prohibition cannot be deduced from the statutory language alone. Our reading of the language must be informed by Congress' intent in enacting the prohibition,

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[4] National Woodworkers Mfrs. Ass'n. v. NLRB, 386 U.S. 612, 619 (1967), quoting Holy Trinity Church v. United States, 143 U.S. 457, 459 (1892).

[5] Local 1976, United Brotherhood of Carpenters v. Labor Board, 357 U.S. 93, 99-100 (1958); *see* National Woodworkers Mfrs. Ass'n. v. NLRB, *supra*, at 619.

as fairly discerned from the relevant legislative materials. And our inquiry must attend to the place of the section in the complex of statutory provisions that concern the relationship between employers and supervisors.[6]

The Taft-Hartley Act of 1947[7] excludes supervisors from the definition of the term "employee," enabling employers to condition supervisors' employment on nonmembership in unions and nonparticipation in union affairs. Nevertheless, the law does not ban supervisors from wholly supervisory unions or from unions including, or even dominated by, rank-and-file employees. On the contrary, Section 14(a) of the Act[8] specifically provides that "[n]othing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization . . . ."[9]

But while preserving supervisors' rights to become and remain union members, the Act denies to supervisors the protections it affords to rank-and-file employees. Supervisors may not resort to federal and state labor relations boards to compel employer recognition, good faith bargaining, and nondiscriminatory treatment. They are, instead, left "to seek redress in self-help" for their economic and organizational grievances:[10]

> The Taft-Hartley Act changes, while they do not outlaw foremen's unions, leave both foremen and employers to their economic weapons—the foremen to strikes and picketing to compel recognition, the

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[6] *See* NLRB v. Allis Chalmers Mfg. Co., 388 U.S. 175 (1967).

[7] Labor Management Relations Act §§ 1-47, 29 U.S.C. §§ 141-87 (1970), *amending* 49 Stat. 449 (1935).

[8] 29 U.S.C. § 164(a) (1970).

[9] *See* Comment, *The Role of Supervisors in Employee Unions*, 40 U. CHI. L. REV. 184, 187 (1972).

[10] 1 Legislative History of the Labor Management Relations Act of 1947 at 613 (1947).

latter to discriminatory discharges, espionage and blacklists to combat efforts to organize.[11]

The Board's decision in this case restricts the power of supervisors to resort to self-help—a power that Congress intended them to retain—so long as they belong to a union containing statutory employees and so long as their positions involve collective bargaining or grievance adjustment functions. In effect, it places a tax on supervisors' right to remain members of employee unions, a right that Section 14(a) specifically preserves.

I find nothing in the legislative history of Section 8(b)(1)(B) to support, or even favor, a conclusion that Congress intended it so to restrict supervisors' rights. On the contrary, the legislative history makes clear that Congress was concerned with an entirely different problem. The Section was intended to prevent efforts by *employee unions* to coerce employers into choosing, as collective bargaining and grievance adjustment representatives, persons sympathetic to the union's rank-and-file members, rather than persons loyal to the employer.[12] Consistently with this purpose, the Board has extended the Section to include employee union attempts, by discipline or otherwise, to force its supervisor members to perform collective bargaining or grievance adjustment functions in a manner favorable to the union.[13] Before this case, however, the Board has never attempted to

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[11] Cox, *The Labor-Management Relations Act*, 61 HARV. L. REV. 1, 5 (1947); *see* Smith, *The Taft-Hartley Act and State Jurisdiction Over Labor Relations*, 46 MICH. L. REV. 593, 600 (1948).

[12] *See, e.g.*, 93 CONG. REC. 3953 (1947), 1 Legislative History, *supra* note 7, at 1012 (remarks of Senator Taft). For a full discussion of the legislative history of the Section and its proper construction, see this court's recent *en banc* decision in International Brotherhood of Electrical Workers v. NLRB, Slip Opinion No. 71-1559, at 12-28 (June 29, 1973).

[13] *E.g.*, San Francisco-Oakland-Mailers' Union No. 18, 172 NLRB No. 252 (1968).

apply Section 8(b) (1) (B) to a union that neither represented, nor aspired to represent, the employer's rank-and-file employees. And the reason for this is clear: in such circumstances, the purpose that Congress intended the Section to achieve is simply not implicated.

I would hold that a supervisory union is not a "labor organization" within the ambit of Section 8(b) (1) (B) unless it represents the rank-and-file employees of the supervisors' employer. I think this the only holding consistent with Congress' intent in enacting the Section and with the proper place of the Section in Congress' scheme for dealing with supervisor-employer relations. There is, however, another consideration that strongly militates in favor of this conclusion in this case. The Board has decided that the peaceful picketing in which MM&P's members engaged constituted an unfair labor practice. But the Supreme Court has consistently said that, before ascribing to Congress a purpose to outlaw peaceful picketing, there must be "'the clearest indication in the legislative history' . . . that Congress intended to do so *as regards the particular ends of the picketing under review.*"[14] This rule of construction, grounded as it is in First Amendment guarantees,[15] precludes, I think, the wooden construction of Section 8 (b) (1) (B) that the Board has adopted and the majority approves. The legislative history of the Section quite simply lacks any indication that it was intended to prohibit supervisors from peaceful picketing in protest of their employer's actions, at least when their protest does not even arguably favor the interests of their employer's rank-and-file employees.

Despite these considerations, the majority insists that the Act puts those supervisors who have collective bargaining or grievance adjustment functions to a choice.

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[14] NLRB v. Fruit & Vegetable Packers, Local 760, 377 U.S. 58, 62-63 (1964), *quoting* NLRB v. Drivers Local Union, 362 U.S. 274, 284 (1961). (Emphasis added).

[15] *Id.*

They may either join wholly supervisory unions, to which the prohibitions of the Act are inapplicable, or they must abide Section 8 restrictions on their efforts at self-help. As a practical matter, I doubt that this leaves supervisors or their unions with any real choice at all.[16] In any case I find it clear that no such choice was contemplated by Congress. At most, the purpose of the Act favors a more narrowly drawn, more rational rule: a union may engage in self-help to protect the employment interests of its supervisor-members so long as the union does not at the same time represent rank-and-file employees of the supervisors' employer.

I grant that this rule would, as the majority points out, work some inequity, since unions that represent both supervisors and their subordinates would be restricted in their resort to self-help. In that circumstance, however, Congress' purpose in enacting Section 8(b) (1) (B) is at least arguably involved. I do not understand how avoiding this lesser inequity justifies adopting a construction of the Section that leads to greater inequity—inequity that is, moreover, entirely unjustified by the interests Congress intended the Section to protect.

I would grant the petition for review, reverse the decision of the Board, and deny enforcement of the order. I respectfully dissent.

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[16] The majority contends that, in return for accepting Section 8(b)'s restrictions, supervisory unions containing statutory employees receive certain protections under Section 8(a). But the quid is by no means equal to the quo. For example, a supervisor who becomes a member of a union containing statutory employees might be discharged by his employer and replaced. Since the supervisor is not himself a statutory employee, he would not be able to get redress from the Board on the ground that he had been discriminatorily dismissed in violation of Section 8(a)(3). Yet, under the majority's construction of 8(b)(1)(B), any attempt by the union or the supervisor himself to protest his dismissal would constitute an unfair labor practice. Thus, while the supervisors' union may receive certain statutory protections as a labor organization, the supervisors themselves do not.

APPENDIX D

Trial Examiner's Decision

TXD-100-72

San Juan, P.R.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

Case No. 24-CB-781

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARINE DIVISION, ILA, AFL-CIO and UNION DE TRABAJADORES DE MUELLES Y RAMAS ANEXAS, LOCAL 1740, ILA-AFL-CIO

and

MARINE AND MARKETING INTERNATIONAL CORPORATION.

Martin M. Arlook, Esq., for
the General Counsel.

Ruperto J. Robles, Esq., for
the Charging Party.

Burton M. Epstein, Demtrio Fernandez, and *Marvin Schwartz, Esqs.*, for
Respondent Masters, Mates
& Pilots.

Seymour M. Waldman, Esq.,
Counsel for Respondent
Local 1740, ILA

STATEMENT OF THE CASE

JOHN P. VON ROHR, Trial Examiner: Upon an original charge filed on September 14, 1971, and an amended charge filed on September 20, 1971, the General Counsel of the National Labor Relations Board, by the Regional Director

for the 24th Region (Hato Rey, Puerto Rico), issued a complaint on September 20, 1971, against International Organization of Masters, Mates and Pilots, International Marine Division, AFL-CIO, and against Union De Trabajadores De Muelles Y Ramas Anexas, Local 1740, AFL-CIO, alleging that they had restrained and coerced Marine & Marketing International Corporation, herein called the Company, in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances, thereby engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act. The Respondents filed an answer denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on November 8 and 9, 1971, in Hato Rey, Puerto Rico, before Trial Examiner John P. van Rohr. All parties were represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses, and to file briefs. A brief was received from the General Counsel on January 3, 1972 and a joint brief was received from the Respondents on December 30, 1971. These have been carefully considered. Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. The Business of the Employer

Marine & Marketing International Corporation is a Delaware corporation with its principal office and place of business located at Miami, Florida where it is engaged in the operation of the M/V "Floridian," an American Flag vessel carrying goods and commodities between Miami, Florida and San Juan, Puerto Rico. Since the beginning of its operations on July 30, 1971 the said vessel has transported goods and commodities valued in excess of $50,000 between continental United States and Puerto Rico. The Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organizations Involved

International Organization of Masters, Mates and Pilots, International Marine Division, AFL-CIO and Union De Trabajadores De Muelles Y Ramas Anexas, Local 1740, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.[1]

III. The Unfair Labor Practices

A. *The Facts*

The relevant facts are not in dispute. The M/V "Floridian," a container type cargo vessel, has been part of the American merchant marine for approximately ten years. The owner of this vessel has at all times been Containerships, Inc. For a number of years prior to about November, 1970, the vessel was leased and operated by the South Atlantic & Caribbean Steamship Corp., hereinafter called SACAL. At all times while the ship was operated by SACAL, the master and three mates were represented by Respondent International Organization of Masters, Mates and Pilots, hereinafter called MMP, while the unlicensed seamen were represented by the Seafarers International Union, hereinafter called SIU. Each of these labor organizations had collective bargaining agreements with SACAL while SACAL operated the ship.[2]

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[1] Paragraph IV of the complaint alleges that each of the above-named unions are labor organizations within the meaning of Section 2(5) of the Act. The Respondents' answer omits any reference whatsoever to Paragraph IV and the said allegations, accordingly, have not been specifically denied. The above findings that the Respondent unions are labor organizations within the meaning of the Act have therefore been made pursuant to Section 102.20 of the Board's Rules and Regulations, Series 8, as amended.

[2] While the record is not clear whether a different employer preceded SACAL as operator of the ship, the record is clear that the above unions represented the respective units of employees ever since the Floridian commenced operations.

In November, 1970, the Floridian was decommissioned and was placed in dry dock at Norfolk, Virginia. In about March, 1971 (while the Floridian was still in dry dock) Marine & Marketing International Corporation, the charging party herein, was formed. This company was established for the principal purpose of operating the M/V "Floridian" on container service between Miami, Florida and San Juan, Puerto Rico. While the exact effective dates of a lease agreement which Marine & Marketing entered into with Containerships, Inc. is not reflected in the record, it is undisputed that Marine & Marketing succeeded SACAL as operator of the vessel. The new company took delivery of the ship at Norfolk, Virginia in mid-July, 1971.

Eduardo Garcia is the president and general manager of Marine & Marketing, hereinafter called the Company, and the record is clear that it is he who is principally responsible for running the Company and for making Company policy.[3] It is undisputed that from the outset Garcia decided to deal with MEBA with the intent of staffing the ship with officers who belonged to that labor organization, rather than to deal with MMP and hire MMP officers; it is further undisputed that this decision was motivated by Garcia's feeling that it would be economically more advantageous for the Company to deal with MEBA than with MMP.[4] It was on June 15, 1971, then, that Marine & Mar-

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[3] Garcia, a Cuban exile, was the primary organizer of the Company and a number of other Cuban exiles like himself participated as investors. Occupying the position of vice-president and general manager when the Company was first formed, Garcia became president in August, 1971.

[4] Although Garcia gave reasons why he considered it to be more economically advantageous to deal with MEBA rather than with MMP (the validity of which reasons were disputed in testimony proffered by Respondents) these reasons do not play any part in my decision and hence need no further elaboration. I recognize, of course, that Garcia's motivation in hiring MEBA personnel is related to Respondents' defense.

keting signed a three year contract with MEBA, the said contract covering a unit composed of the master, the licensed deck officers, the chief engineers and the licensed engineering officers.

MEBA, following execution of the above contract, presented Garcia with the names of several MEBA captains from whom he could make a selection for hire. After interviewing several captains, Garcia in about the latter part of June, 1971.[5] hired Captain Donald Mappin to act as master of the Floridian. Mappin reported to the ship while it was still in dry dock at Norfolk in the early part of July. Garcia authorized Mappin to hire the other ship officers and Mappin shortly engaged three MEBA mates.

On July 13, a representative of MMP, one Mr. Pesil, came aboard the Floridian in Norfolk and asked Garcia when he intended to procure officers for the ship. Garcia related the agreement he had entered into with MEBA and advised that he had already hired a captain. During the conversation which followed, Pesil told Garcia, *inter alia,* that he was making a big mistake, that MMP was now affiliated with the International Longshoremen's Association, (hereinafter called ILA), and that he would be subject to "serious consequences."[6] About 10 days later Pesil made a telephone call to Garcia and at this time again asked "when he was going to order the officers for the ship." After some discussion, Garcia finally was advised, upon his inquiry, that Captain O'Callaghan, President of MMP, was the head man of the Union. Either that day or the next Garcia went to see O'Callaghan at his New York City headquarters. Garcia explained his contractual agreement with MEBA. O'Callaghan stated that MMP had always supplied the Floridian with officers and that "by tradition

[5] All dates hereinafter, unless otherwise indicated, refer to the year 1971.

[6] The uncontroverted and credited testimony of Garcia.

those jobs belonged to us." Although nothing was accomplished during this meeting, Garcia testified without contradiction that after some argument O'Callaghan finally stated that they "were going to stop the ship."

Upon completion of repairs, the Floridian departed from Norfolk and arrived at Miami, Florida at about 6:00 p.m. on July 30. It is undisputed that Respondent MMP picketed the ship shortly after it docked at the pier. The pickets included Captain William Travers and three of his mates, all members of MMP and all of whom were the most recent officers aboard the Floridian when it had been operated by SACAL. The legend on the picket signs stated as follows:[7]

> MV Flordian Unfair to Fred W. Neuman Former 3rd Mate Member of International Org. Master Mates & Pilots Int. Marine Div. I.L.A. AFL-CIO.

The picketing was honored by ILA Longshoremen in Miami, members of an ILA local other than Respondent Local 1740.[8]

A temporary restraining order was obtained by the Company on the evening of the day when the picketing began. All parties complied with the order and the necessary work was performed. The ship sailed the next day and arrived at its destination, San Juan, on August 3.

Colon & Villalon, Inc., a shipping agent and stevedoring contractor, was under contract with the Company to unload the M/V "Floridian" at San Juan. In anticipation of the

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[7] This sign was carried by Neuman. The other signs stated the names of the respective officers who carried them, but otherwise bore the same legend.

[8] A delegate of this Florida Local told a foreman of Harrington & Company, the employer of the longshoremen, that the longshoremen would observe the picket line.

ship's arrival, Pedro Villalon, president of the stevedoring company, made arrangements with the hiring hall operated by Respondent Local 1740 to have a longshore gang report the next morning. Pursuant to this arrangement, a crew of longshoremen reported to the terminal on the morning of August 3 to await the arrival of the vessel. The Floridian arrived at the pier at about 10:00 a.m. Several of the longshoremen assisted in handling the lines as the ship was being docked, although this was not part of their longshoreman duties.

It is undisputed that at about the time the ship was being berthed, and before any unloading of the vessel had begun, a group of four MMP pickets appeared inside the terminal. These pickets included the same MMP officers who had picketed the ship in Miami and their picket signs bore substantially the same legend that was displayed in Miami. Upon the complaint of Pedro Villalon, who was present when this occurred, the police arrived and asked the pickets to leave the terminal facility. The pickets thereupon exited through a terminal gate and stationed themselves immediately outside, a public area.[9]

Villalon testified that at about this time he was called to his office, located upstairs in the terminal, to take a telephone call. Villalon testified that the speaker said he was calling from the Union hall of Respondent Local 1740 and that he wished to speak to Jorge Aponte, the vice president of the Local. According to the credited and undenied testimony of Villalon, he notified Aponte of the call and Aponte went to the upstairs office to answer it. After taking the call, Villalon observed Aponte go to the pier and speak to the crew of longshoremen who were waiting there. Villalon credibly testified that the longshore-

[9] The terminal proper is separated from the outside by a fence with two gates.

men thereupon departed from the terminal.[10] It is undisputed that they did so without having performed any unloading of the ship.

Pursuant to an injunction, the picketing of the M/V "Floridian" finally ceased on about September 17, 1971. During the approximate six week period while the picketing was in effect, Villalon on two separate occasions requested longshoremen gangs from Respondent Local 1740. Although on both occasions the Local accepted the order and dispatched the gang, these employees did not cross the picket line and no unloading of the ship was performed.[11]

B. *Conclusions as to Respondent MMP*

Section 8(b)(1)(B) of the Act provides that it shall be an unfair labor practice for a labor organization to restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.[12]

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[10] Although Captain Robert Lowen, the leader of the pickets, testified that a number of longshoremen preceded the pickets before the pickets exited from the terminal, I credit Villalon's testimony that the longshoremen did not leave the terminal until after Aponte received the telephone call and spoke to them. This, as noted, occurred subsequent to the pickets leaving the terminal. Aponte was not called to refute the testimony of Villalon, as above related.

[11] In the early part of this six week period, the wording "We have no dispute with any other ship" was added to the legend on the picket sign.

[12] "Section 8(b)(1)(B) is, to a large degree, the correlative of the Section 7 guarantee to employees of the right 'to bargain collectively through representatives of their own choosing.' " *Meat Cutters Local 81* v. *N.L.R.B. (Safeway Stores)*, 79 LRRM 2309, fn. 10, enforcing 185 NLRB No. 130, decided January 25, 1972. (C.A.D.C.)

Initially, it is clear and I find that the captain and the three mates employed by the Company were authorized and impowered, (sic) as a part of their duties, to adjust grievances among the crew members. The latter employees are represented by the Seafarers International Union (SIU) and the Company has had a collective bargaining agreement with SIU at all times material hereto. That this contract contemplates that the captain and the mates participate in the adjustment of grievances is clearly reflected in Article II, Section 1, thereof, which provides that the representatives (delegates) of the crew "keep track of *all conditions and problems and grievances* in their respective departments, and *present to their superior officers,* on behalf of the Unlicensed Seamen in their Departments, all facts, opinions and circumstances concerning *any matter which may require adjustment or improvement.*" (Italics supplied) Indeed, the record reflects that even during the relatively short time the ship was operated by the Company, Captain Donald Mappin participated in the adjustment of grievances pertaining to such matters as claims for overtime, complaints about meals being served family style as opposed to cafeteria style, and demands for deck cots.[13] With respect to the mates, it hardly can be questioned that they also are "superior officers" and that they are vested with supervisory authority.[14] In this connection, I reject Respondents' contention that the Com-

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[13] Credited testimony of Captain Mappin. Mappin gave further testimony, which I credit, that when he first reported to the ship in Norfolk, Garcia told him that he was to handle all personnel matters with respect to hiring, firing or any disputes that would occur on the vessel.

Additionally, it may be noted that Mappin discharged a crew member for drunkeness.

[14] Mappin testified without contradiction that it is traditional for a captain to delegate certain of his supervisory authority and responsibility to the mates. He also testified that one of his mates aboard the Floridian participated in the adjustment of a claim by a crewman.

pany has no power to select the mates and that therefore the mates cannot be deemed to be Company "representatives" within the meaning of Section 8(b)(1)(B). Although of Section 1 of Article II of the MEBA contract appears to permit the Union to assign mates to employment on the Company's vessels, Section 3 of that article gives the Company the right to reject any applicant for employment whom the Company considers disqualified or unsatisfactory for the position, or to discharge any officer who in the opinion of the Company is not satisfactory. Thus, it is clear that the Company at all times retains control of the hiring and discharging of the mates.

Secondly, it is also clear, and I find, that Respondent MMP engaged in picketing against the Company and that such picketing constitutes restraint and coercion as envisioned by the statute. *International Hod Carriers, Building and Common Laborer's Union of America, Local 1140 (Gilmore Construction Company)*, 127 NLRB 541, footnote 6, enf'd. 285 F.2d 397 (C.A. 8).[14a]

Third, since it is also clear, indeed, it is conceded by Respondent, that the object of the picketing was to require the Company to replace the MEBA captain and mates with a captain and mates belonging to MMP, there can be no doubt that Section 8(b)(1)(B) is applicable to the situation at hand, *viz.*, the exercise of coercion (picketing) to require the Company to change its selection of individuals whose duties include the adjustments of employee grievances.

Respondents defend principally upon their assertion that Section 8(b)(1)(B) was not intended to apply "to a union's efforts to regain jobs lost because of a Company's desire to switch from one supervisory union to another because it could thereby effect savings in labor costs. . . ." I

[14a] See also *Laborers, Local 423 (Mansfield Flooring Co.)*, 195 NLRB No. 35.

would first note that the foregoing statement in relevant part is not factually correct. Thus, here there was no "switch" by the company (SACAL) who formerly operated the Floridian and who at that time was the employer of MMP personnel. Rather, the selection of MEBA personnel was made by Marine & Marketing, an entirely different Company and obviously also a new and different employer. In any event, and assuming that Respondent's objective to regain jobs which its members previously held aboard the same vessel was a legitimate union goal, this does not exempt it from conduct proscribed by the Act. Thus, in an analogous situation, *Meat Cutters Local 81 v. N.L.R.B., supra,* wherein the union was found to have engaged in conduct violative of Section 8(b)(1)(B) of the Act, the Union also argued, as apparently do the Respondents here, that its objective was legitimate and its conduct therefore permissible. The Court, however, stated as follows:

> The Union finally contends that since its action had the objective of preserving bargaining unit work, it was permissible under the Act. However, while it is well recognized that the preservation of unit work is a legitimate union goal, a labor organization is clearly not free to utilize any means it chooses in order to achieve a desired result.

Correlative to Respondent's contention that its conduct should be exempted from the proscription of Section 8(b)(1)(B) because of the alleged legitimacy of its objective is its further contention that it did not violate this section of the Act because the conduct "did not stem from any grievance adjusting activity on the part of the Floridian's officers." The short answer to this is that the Board has considered and rejected a similar contention in *International Brotherhood of Electrical Workers, AFL-CIO and Local 134, et al. (Illinois Bell Telephone Company),*

192 NLRB No. 17.[15] I deem myself bound by the Board's decision therein.

In sum, I find that the conduct of Respondent MMP in picketing the vessel M/V "Floridian", under all the circumstances noted above, restrained and coerced the Company in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances, and that Respondent MMP thereby violated Section 8(b)(1)(B) of the Act.[16]

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[15] While the Board majority did not elaborate on the point, it obviously did not agree with the reasoning of the dissenting Board member who in his dissent stated as follows:

> In summary, because the fines involved herein were not imposed upon the supervisors because of the manner in which they performed duties related to their collective-bargaining or grievance-adjustment functions, but were imposed because of their violation of an unrelated union rule proscribing members of the union from performing struck work during a strike, I find that the supervisors were not restrained or coerced in the performance of the statutorily protected functions. It follows that the Employer was not restrained or coerced in the selection of representatives to perform such functions.

See also *Local Union No. 2150 International Brotherhood of Electrical Workers, AFL-CIO, (Wisconsin Electric Power Company)*, 192 NLRB No. 16.

[16] Respondents also assert that legislative history reflects that Congress did not intend Section 8(b)(1)(B) to prohibit the conduct which I have herein found to be unlawful. I find no merit to this contention. Although Respondents' brief cites isolated examples of various type conduct that Congress sought to proscribe, this does not mean that it intended to exclude conduct, such as that here involved, which is literally and directly encompassed within the language of Section 8(b)(1)(B).

C. *Additional Facts; Conclusions as to Respondent Union De Trabajordores De Muelles Y Ramas Anexas, Local 1740, AFL-CIO*

A further allegation of the complaint is, in substance, that Respondent ILA Local 1740 "acted in concert" with Respondent MMP and that it also engaged in a course of conduct violative of Section 8(b)(1)(A) of the Act.

Preliminarily, it is to be noted that on March 31, 1971, officials of MMP and the International Longshoremen's Association announced that it was "the unanimous decision of the Executive Board of the International Longshoremen's Association, to issue a charter of affiliation of the International Organization of Master, Mates and Pilots, AFL-CIO, or the Marine Division of the International Longshoremen's Association."[17] Although the record was not fully developed on the point, it appears that the foregoing decision was subject to ratification by the members of both Unions. Captain Robert Lowen testified that a referendum ballot was in the process of being taken, but had not been completed, as of the time of the hearing herein.

Turning to the instant dispute, further facts are here in order. It will be recalled that the picketing of the Floridian began at the time it docked on August 3. On August 6, Garcia, the Company's president, met with various officials of the MMP and the ILA at the office of Juan Perez Roa, an International Vice-President of ILA who is located in Puerto Rico. Included among those present at this meeting were Roa, Villalon, Captain Lowen and Chu Castro, president of Local 1740.[18] The meeting proceeded with Garcia making a plea that the vessel be unloaded, pointing out that the cargo included frozen food

[17] General Counsel's Exhibit 8.

[18] It is unnecessary to name other individuals who attended this meeting.

which was subject to spoilage. Although various responses were made, it is pertinent here to note only the statements of Vice President Roa. Thus, according to the credited and unrefuted testimony of Garcia, Roa at one point stated that the International in New York was calling the shots, that he had instructions not to discharge the vessel, that the longshoremen would not discharge the ship even if the members were jailed for refusing to comply with any court injunction, and that he [Garcia] had no choice but to capitulate and do business with the Master, Mates and Pilots Union. Garcia testified that at this point Roa turned to Captain Lowen and said, "This is up to you, if you tell us to discharge the ship for Master, Mates and Pilots we will do it because now you know what is happening here." Although some further conversation took place between Garcia and the various union representatives who were present, the meeting terminated without any agreement being reached.

On August 14, Garcia went to the Carib Hilton Hotel for the purpose of meeting Captain Lowen for further negotiation of the dispute. There he met Lowen who entered the lobby accompanied by Johnny Bowers, International Executive Vice President of ILA, Willie Murphy, also an ILA Vice President, and Juan Perez Roa. Garcia addressed the group about the Company's problems and at one point complained directly to Bowers, with whom he was acquainted, concerning the position that the ILA had taken. According to the undenied testimony of Garcia, Bowers replied, "You must be crazy to think that the ILA will not support Masters, Mates & Pilots, they have affiliated with us and they have brought 12,000 members into our union."

Turning to my conclusions, it first should be recalled that on the morning of August 3, while the ship was being docked, the gang of longshoremen remained waiting on the dock of the terminal after the MMP pickets had de-

parted to the area outside the terminal upon orders of the police. At this point Jorge Aponte, vice president of Respondent Local 1740, took a phone call from his union hall, upon completion of which he went and spoke to the longshoremen who had remained at the dock. As previously found, these employees departed as soon as he spoke to them. Upon consideration of all the circumstances, including Respondents' failure to call Aponte to give any explanation for this conduct, I think it a reasonable inference, and I so infer, that Aponte gave instructions to the longshoremen to leave.[19] However, assuming that standing alone this incident is insufficient to bind Respondent Local 1740, the statements which Juan Perez Roa made to Garcia on August 6 that he had instructions from New York not to discharge the vessel, that the longshoremen would not unload the ship, as well as the other remarks by him at this time as set forth above, impel the obvious conclusion, and I find, that strike instructions were outstanding to members of the Local not to unload the vessel. Although the statements were made by a representative of the International Union, President Chu Castro of Respondent Local 1740 was present at the time and took no action to disavow what he said.

In addition to the foregoing, it will be recalled that the legend on the picket signs included the words "International Org. Master, Mates & Pilots Int. Marine Div. *I.L.A.* AFL-CIO" (emphasis supplied). This legend remained on the signs throughout the picketing, yet the ILA took no steps to disassociate itself from the picketing nor did it ever disclaim affiliation with Respondent MMP, as stated on the picket sign.

In view of all the foregoing, I conclude and find that Respondent Local 1740 acted in concert with Respondent MMP and that its entire course of conduct, as above de-

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[19] Cf. *International Brotherhood of Teamsters, Local No. 554 (Clark Bros. Transfer Company, et al.)*, 116 NLRB 1891, 1901.

scribed, was in violation of Section 8(b)(1)(B) of the Act. [20]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondents set forth in section III above, appearing in connection with the operations of Respondents set forth in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and conclusions of law, and upon the entire record in this case, I hereby make the following:

CONCLUSIONS OF LAW

1. The Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Organization of Masters, Mates & Pilots, International Marine Divsion, AFL-CIO and Union De Trabajadores De Muelles Y Ramas Anexas, Local 1740, AFL-CIO, are labor organizations within the meaning of Section 2(6) and (7) of the Act.

3. By picketing the ship M/V "Floridian" for the purpose of restraining and coercing an employer in the selec-

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[20] Although on two occasions after August 3 Respondent Local 1740 went through the motions of sending longshoremen to the terminal (at Villalon's request) this does not dissuade me that this Respondent did not engage in the unlawful course of conduct herein found.

tion of his representatives for the purposes of collective bargaining or the adjustment of grievances, Respondent International Organization of Masters, Mates and Pilots, International Marine Division, AFL-CIO, have engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. By instructing their members not to unload the vessel M/V "Floridian" for the purpose of restraining or coercing an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances, Respondent Union De Trabajadores De Muelles Y Ramas Anexas, Local 1740, AFL-CIO, has engaged in the unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[21]

ORDER

A. Respondent International Organization of Masters, Mates and Pilots, International Marine Divsion, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Picketing the vessel M/V "Floridian" to procure the removal of Marine & Marketing International Corpora-

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[21] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

tion of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) In any other manner restraining or coercing that employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places at its offices and meeting halls, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix A."[22] Copies of the notice on forms to be provided by the Regional Director for Region 24, shall after being duly signed by an authorized representative be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for Region 24, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.[23]

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[22] In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

[23] In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

B. Respondent Union De Trabajadores De Muelles Y Ramas Anexas, Local 1740, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Ordering, instructing or advising its members to withhold their services in the unloading of the M/V "Floridian" for the purpose of procuring the removal by Marine & Marketing International Corporation of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) In any other manner restraining or coercing that employer in the selection of representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its offices and meeting halls copies of the notice attached hereto and marked "Appendix B."[24] Copies of said notice on forms provided by the Regional Director for Region 24, after being duly signed by an authorized representative, shall be posted by Respondent immediately by receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places were notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that certain notices are not altered, defaced or covered by any other material.

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[24] In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(b) Notify the said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[25]

Dated at Washington, D.C.

[February 22, 1972]

JOHN P. VON ROHR
John P. von Rohr
Trial Examiner

APPENDIX A

(Notice re "International" etc.)

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT picket the ship M/V "Floridian" to procure the removal by MARINE & MARKETING INTERNATIONAL CORPORATION of its representatives for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT in any other manner restrain or coerce the above-named employer in the selection of representatives for the purposes of collective bargaining or the adjustment of grievances.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARINE DIVISION, AFL-CIO
(Labor Organization)

Dated .....By .....
(Representative) (Title)

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[25] In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office Pan Am Building, 7th Floor, P.O. Box U U, 255 Ponce de Leon Avenue, Hato Rey, Puerto Rico 00919 (Tel. No. 106-764-2424).

APPENDIX B

(Notice re "Union De Trabajadores" etc.)

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT order, instruct or advise our members to withhold their services in the unloading of M/V "Floridian" for the purpose of procuring removal by MARINE & MARKETING INTERNATIONAL CORPORATION of its representatives for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT in any other manner restrain or coerce the above-named employer in the selection of representatives for the purposes of collective bargaining or the adjustment of grievances.

UNION DE TRABAJADORES DE MUELLES Y RAMAS ANEXES, LOCAL 1740, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office Pan Am Building, 7th Floor, P.O. Box U U, 255 Ponce de Leon Avenue, Hato Rey, Puerto Rico 00919 (Tel. No. 106-764-2424).

Trial Examiner's Errata

TXD-100-72

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

[SAME TITLE]

The Trial Examiner's Decision in the above-captioned case is hereby corrected as follows:

At page 3, line 34, after the words "to deal with" add the words "Marine Engineers Beneficial Association, District 2, a labor organization, herein called".

JOHN P. VON ROHR
John P. von Rohr
Trial Examiner

Dated: February 22, 1972
Washington, D. C.

Trial Examiner's Addenda

TXD-100-72
San Juan, P. R.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

[SAME TITLE]

The Trial Examiner's Decision in the above-captioned case is hereby amended as follows:

(1) At page 13, line 12, the following sentence is to be added: "The said Appendix A shall be posted in Spanish as well as in English."

(2) At page 14, line 2, the following sentence is to be added: "The said Appendix B shall be posted in Spanish as well as in English."

JOHN P. VON ROHR
John P. von Rohr
Trial Examiner

Dated: March 2, 1972
Washington, D. C.

APPENDIX E

Decision and Order

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

[SAME TITLE]

On February 22, 1972, Trial Examiner John P. von Rohr issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief and a request for oral argument,[1] and the General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings, and conclusions and to adopt his recommended Order.

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[1] Respondent's request for oral argument is hereby denied as, in our opinion, the record in this case, including the exceptions and briefs, adequately presents the issues and positions of the parties.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that Respondents, International Organization of Masters, Mates and Pilots International Marine Division, ILA-AFL-CIO; and Union De Trabajadores De Muelles Y Ramas Anexas, Local 1740, ILA-AFL-CIO, their officers, agents, and representatives, shall take the action set forth in the Trial Examiner's recommended Order.

Dated, Washington, D.C.
Jun 12 1972

Edward B. Miller, Chairman

John H. Fanning, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)